

ADMINISTRATIVE APPEAL OF
FRANK W. PLUNKETT and ANNABELLE PLUNKETT

IBIA 77-48-A

Decided December 7, 1977

Appeal from decision of Assistant Area Director, Bureau of Indian Affairs, Phoenix, Arizona, canceling a 25-year recreational development lease involving some 150 acres of land at Wildhorse Reservoir located in Elko County, Nevada.

Affirmed.

APPEARANCES: Evans & Bilyeu by Hugh D. McMullen, Esq., for Appellants.

OPINION BY ADMINISTRATIVE JUDGE SABAGH

This is an appeal from the decision of the Acting Area Director, Bureau of Indian Affairs, issued on June 14, 1976 (although dated June 7, 1976), wherein Lease No. B-115, Contract No. 14-20-H53-284 was canceled for, among other things, failure to provide an annual performance and payment bond as provided for in Article 14 of said contract.

A timely notice of appeal was filed on or about July 14, 1976, and a decision was issued by the Acting Deputy Commissioner of Indian Affairs on April 28, 1977, affirming the decision of the Assistant Area Director.

The Appellants contend, inter alia, that any default by the Appellants is purely of a technical nature being induced by the impossibility of performance by reason of the wording of Article 14 of said lease and that consequently Article 10 of the lease excuses performance. Appellants further contend that Article 5 of the lease requires the lessor to give lessee a right of first refusal to operate any competing business ventures on Federal lands at Wildhorse Reservoir.

Finally, Appellants contend the decision of the Acting Deputy Commissioner of Indian Affairs is void because it violates 25 CFR 2.19 of the departmental regulations.

The Board has reviewed the complete record in this matter and has given consideration to the arguments of the Appellants. Moreover, we note with interest the extensive negotiations carried on in good faith between the parties toward modification of Article 14, but without success.

We are constrained, however, to agree with the decision of the Assistant Area Director in canceling said lease for noncompliance with the stated lease provisions. Further, we cannot agree with Appellants that Article 10 excuses Appellants' apparent inability to provide performance bonds in compliance with Article 14.

We conclude that cancellation of said lease because of Appellants' failure to provide the required annual performance and payment bond, makes Article 5 inoperative.

We find it unnecessary to address ourselves to the contention that the Acting Deputy Commissioner's decision is void because it violates 25 CFR 2.19 of departmental regulations, since we have directed our attention toward the Assistant Director's decision and affirm same.

NOW, THEREFORE, by virtue of the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1(2), the decision of the Assistant Area Director issued June 14, 1976, is AFFIRMED and the appeal is hereby DISMISSED.

This decision is final for the Department.

Done at Arlington, Virginia.

Mitchell J. Sabagh
Administrative Judge

We concur:

Alexander H. Wilson
Chief Administrative Judge

Wm. Philip Horton
Administrative Judge